

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

FILED  
CLERK'S OFFICE

JUN 10 2004

ROBERT WNUK, )  
Plaintiff )

U.S. DISTRICT COURT  
DISTRICT OF MASS.

v. )

DOCKET NO. 04-30082-KPN

ARIENS COMPANY and )  
CARLISLE TIRE & WHEEL )  
COMPANY, )  
Defendants )

**ANSWER OF THE DEFENDANT, CARLISLE TIRE & WHEEL COMPANY  
TO PLAINTIFF'S COMPLAINT**

The Parties

Now comes the defendant, Carlisle Tire & Wheel Company ("Carlisle Tire & Wheel"), and answers the plaintiff's complaint as follows:

1. The defendant is without knowledge concerning the allegations contained in this paragraph.
2. The defendant is without knowledge concerning the allegations contained in this paragraph.
3. The defendants admit the allegations contained in this paragraph.

Jurisdiction and Venue

4. The defendant says this paragraph sets forth conclusions of law which are for the Court to determine; the defendant denies the matter in controversy exceeds \$75,000.
5. The defendant says the allegations contained in this paragraph state conclusions of law for the Court to determine.

Facts

6.-11. The defendant, Carlisle Tire & Wheel, does not respond to the allegations contained in these paragraphs as they do not pertain to the defendant Carlisle Tire & Wheel; insofar as any of the allegations contained in these paragraphs do apply to the defendant, Carlisle Tire & Wheel, they are specifically denied.

12. The defendant denies the allegations contained in this paragraph.

13. The defendant denies the allegations contained in this paragraph insofar as it is alleged Carlisle Tire & Wheel manufactured the rear wheel assembly.

14. The defendant, Carlisle Tire & Wheel, is without knowledge concerning the allegations contained in this paragraph and leaves the plaintiff to proof.

COUNTS I THROUGH III

The defendant, Carlisle Tire & Wheel, does not respond to the allegations contained in these counts as they do not appear to pertain to the said defendant, Carlisle Tire & Wheel. Insofar as any of the allegations contained in these counts do apply to the defendant, Carlisle Tire & Wheel, they are specifically denied.

COUNT IV

30. The defendant, Carlisle Tire & Wheel, incorporates by reference its responses to the allegations contained in paragraphs 1 through 14.

31. The defendant, Carlisle Tire & Wheel, denies that it manufactured the rear wheel assembly.

31. a.-b.-c. The defendant, Carlisle Tire & Wheel, denies the allegations contained in this paragraph.

32. a.-b.-c. The defendant, Carlisle Tire & Wheel, denies the allegations contained in this paragraph, including the subparts.

33. The defendant, Carlisle Tire & Wheel, denies the allegations contained in this paragraph.

34. The defendant, Carlisle Tire & Wheel, denies the allegations contained in this paragraph.

35. The defendant, Carlisle Tire & Wheel, denies the allegations contained in this paragraph.

WHEREFORE, the defendant, Carlisle Tire & Wheel, requests that judgment in its behalf together with interest and costs.

#### COUNT V

36. The defendant, Carlisle Tire & Wheel, incorporates by reference its answers to paragraphs 1 through 14.

37. The defendant, Carlisle Tire & Wheel, denies that it manufactured the rear wheel assembly.

38. a.-e. The defendant, Carlisle Tire & Wheel, denies the allegations contained in this paragraph, including the subparts.

39. a.-e. The defendant, Carlisle Tire & Wheel, denies the allegations contained in this paragraph, including the subparts.

40. The defendant, Carlisle Tire & Wheel, denies the allegations contained in this paragraph.

41. The defendant, Carlisle Tire & Wheel, denies the allegations contained in this paragraph.

42. The defendant, Carlisle Tire & Wheel, denies the allegations contained in this paragraph.

WHEREFORE, the defendant, Carlisle Tire & Wheel, requests that judgment in its behalf together with interest and costs.

COUNT VI

43. The defendant, Carlisle Tire & Wheel, incorporates by reference its answers to paragraphs 1 through 14.

44. The defendant, Carlisle Tire & Wheel, denies the allegations contained in this paragraph.

45. The defendant, Carlisle Tire & Wheel, denies the allegations contained in this paragraph.

46. The defendant, Carlisle Tire & Wheel, denies the allegations contained in this paragraph.

47. The defendant, Carlisle Tire & Wheel, denies the allegations contained in this paragraph.

48. The defendant, Carlisle Tire & Wheel, denies the allegations contained in this paragraph.

49. The defendant, Carlisle Tire & Wheel, denies the allegations contained in this paragraph.

WHEREFORE, the defendant, Carlisle Tire & Wheel, requests that judgment in its behalf together with interest and costs.

COUNT VII

50. The defendant, Carlisle Tire & Wheel, incorporates by reference its answers to paragraphs 1 through 14.

51. The defendant, Carlisle Tire & Wheel, denies the allegations contained in this paragraph.

52. The defendant, Carlisle Tire & Wheel, denies the allegations contained in this paragraph.

WHEREFORE, the defendant, Carlisle Tire & Wheel, requests that judgment in its behalf together with interest and costs.

**THE DEFENDANT RESERVES THE RIGHT TO ASSERT ADDITIONAL AFFIRMATIVE DEFENSES UPON COMPLETION OF DISCOVERY.**

**THE DEFENDANT DEMANDS A TRIAL BY JURY ON ALL CLAIMS AND ISSUES.**

**FIRST AFFIRMATIVE DEFENSE**

The acts complained of were not committed by a person for whose conduct the defendant was legally responsible.

**SECOND AFFIRMATIVE DEFENSE**

Any recovery by the plaintiff is barred or must be reduced in accordance with the comparative negligence of the plaintiff pursuant to Mass. Gen. Laws Ch. 231B.

**THIRD AFFIRMATIVE DEFENSE**

Any loss sustained by the plaintiff resulted from his own negligence, which was greater in degree than any negligence of the defendant, thus the plaintiff is barred from recovery in this action.

**FOURTH AFFIRMATIVE DEFENSE**

The defendant says that if the plaintiff was injured or damaged as alleged, the plaintiff assumed the risk of such injuries or damages.

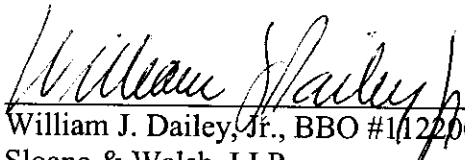
**FIFTH AFFIRMATIVE DEFENSE**

The defendant, Carlisle Tire & Wheel, denies the existence of any warranties.

**SIXTH AFFIRMATIVE DEFENSE**

The defendant, Carlisle Tire & Wheel, denies the existence of any warranties and further states if any warranty or warranties did exist, the plaintiff failed to give reasonable notice of the alleged breaches of the warranties with the result the defendant has been prejudiced and the plaintiff is barred from recovery.

Respectfully submitted,  
CARLISLE TIRE &  
WHEEL COMPANY,  
By its attorneys,

  
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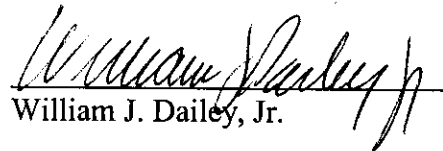
Dated: June 2, 2004

CERTIFICATE OF SERVICE

I, William J. Dailey, Jr., counsel for defendant, do hereby certify that on this 2<sup>nd</sup> day of June, 2004, I caused to be served a true copy of the foregoing upon the parties by mailing same, postage prepaid, first class mail, to their counsel of record:

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William J. Dailey, Jr.